

122 FERC ¶ 61,276  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 24, 2008

In Reply Refer To:  
Guardian Pipeline, L.L.C.  
Docket Nos. RP08-200-000

Guardian Pipeline, L.L.C.  
c/o The Warner  
1299 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2400

Attention: C. Mark Cook, Attorney

Reference: Non-Conforming Service Agreement Changes

Ladies and Gentlemen:

1. On February 15, 2008, Guardian Pipeline, L.L.C. (Guardian) filed nine *pro forma* service agreements as part of its GII Expansion Project (GII), including a firm transportation service agreement (FT-2), an Enhanced Aggregation and Wheeling service agreement (EAW), and a Market Aggregation service agreement (MA), for each GII shipper, namely, Wisconsin Public Service Corporation (WPSC), Wisconsin Gas LLC (Wisconsin Gas), and Wisconsin Electric Power Company (WEPC). Guardian seeks an early determination of the reasonableness of the service agreements because each service agreement contains negotiated rates and/or non-conforming provisions. On March 5, 2008, Guardian supplemented its filing to correct some inadvertent ministerial errors and revise language found in the negotiated rate provisions of the non-conforming service agreements. We determine that the non-conforming provisions of the nine service agreements, as revised, are reasonable, and will require that Guardian file executed copies of the relevant service agreements within thirty days of the date this order issues.

2. On October 13, 2006, in Docket No. CP07-8-000, Guardian submitted an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate its proposed GII expansion project. As part of that application, Guardian submitted for Commission review and approval proposed negotiated rate service agreements with its expansion shippers. In its December 14, 2007 Order approving Guardian's application, the Commission found Guardian's proposed service agreements deficient because they failed to contain sufficient information to facilitate the

Commission's review. The Commission further directed Guardian, if it wanted an early determination of the reasonableness of certain non-conforming provisions, to file the unexecuted service agreements with the non-conforming provisions within thirty days, along with an explanation why the non-conforming provisions are not unduly discriminatory and consistent with Commission policy.<sup>1</sup> In addition, the Commission reminded Guardian of its requirement under section 154.112(b) of its regulations to file the negotiated rate service agreements when they executed them. The Commission granted Guardian's request for an extension to file the unexecuted non-conforming service agreements until March 14, 2008.<sup>2</sup>

3. For each of its three GII shippers, Guardian submits an FT-2, EAW and MA service agreement. The EAW and MA service agreement provisions are the same for each shipper. The WPSC FT-2 service agreement is substantially the same as the FT-2 service agreements for the other two shippers except that it contains additional language that addresses the costs associated with building a meter station, and implementation of a true up mechanism once completed.

4. The negotiated rate and/or non-conforming provisions of the FT-2 service agreements address partial and full in-service dates relating to the construction of facilities, and specifications of amounts to be paid by Guardian to the shipper in the event Guardian fails to deliver all quantities nominated by the shipper after the full in-service date. The provisions include a termination right for both the shipper and Guardian if the full in-service date has not occurred by November 1, 2010, and specify the amounts Guardian must pay if the shipper exercises its termination rights. The negotiated rate language is intended to ensure that Guardian can recover the costs of constructing the GII facilities.

5. In its cover letter, Guardian states that the non-conforming provisions of the EAW service agreements include a change to Article I, Scope of Agreement, that removes the identification of the Maximum Daily Quantity (MDQ) from Article I and specifies that the MDQ and Maximum Enhanced Aggregation and Wheeling Quantity and Delivery

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<sup>1</sup> *Guardian Pipeline, L.L.C.*, 121 FERC ¶ 61,259, at P33-34 & n.20 (2007).

<sup>2</sup> Guardian states that the service agreements have not yet been executed, but that it expects to do so shortly, and if the executed versions differ in any way from the versions submitted in the instant filing, Guardian will promptly update the filing.

Points will be identified in Exhibit A.<sup>3</sup> The purpose of this change, requested by the GII shippers, is to make the EAW service agreements more consistent with their FT service agreements, and will eliminate the need to amend that section of the EAW service agreement in the event of a change in delivery points.

6. The remaining non-conforming provisions in the EAW service agreements document that the negotiated EAW service agreements with the GII shippers are linked to certain FT-2 service agreements, and that defined terms in both agreements have the same meanings. The language also addresses fuel adjustments relating to Transporter's Use Gas which allows modification of the fuel amount under the EAW service agreement as the Transporter's Use Gas amount changes. This alleviates concerns that fuel-related volumes included within the charge assessed on services nominated into a wheeling service may not tie appropriately to volumes out of the wheeling service when Guardian deducts the fuel use volumes at the receipt point under the associated service.

7. Notice of Guardian's filing was issued on February 21, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. §154.210. Wisconsin Public Service Corporation and Wisconsin Electric Power Company filed motions to intervene in support of Guardian's application. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.

8. Guardian submits the GII shippers' negotiated MA service agreements in a form that more closely conforms to its existing form of service agreement under Rate Schedules FT and EAW and reflects non-substantive adjustments to the form of the MA service agreement. Most of the proposed modifications are in the nature of formatting changes, except for language that addresses the link between the MA service agreements and the FT-2 service agreements and the shared definitions in both agreements.

9. In the March 5 supplemental filing, Guardian revises the negotiated rate provisions of the unexecuted service agreements to modify language and make the terminology used in the EAW service agreements consistent, adding the word "Station" to the FT-2 service agreement with WPSC where it had been previously omitted, and correcting the first example formula in section 9.5.1.

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<sup>3</sup> As filed, Exhibit A of the EAW service agreements contains no reference to the Maximum Enhanced Aggregation and Wheeling Quantity. Guardian should include such information when it files its executed copies of the service agreements or explain why it omitted the Maximum Enhanced Aggregation and Wheeling Quantity.

10. Guardian requests that the Commission approve its proposed non-conforming provisions, as revised, as consistent with the Commission's policy of approving non-conforming provisions of service agreements where such provisions do not substantively impair the service rights of other shippers. Guardian contends that its proposed changes address only the specific circumstances of its current GII shippers and will not affect the rights of any other shippers. The changes in the FT-2 service agreements are due solely to the fact that the aforementioned shippers will execute the instant service agreements before Guardian places GII expansion capacity into service. Changes in the EAW service agreements arise from the shippers' desire to link their contracts under Rate Schedule EAW to their contracts under Rate Schedule FT-2, but linking the two agreements is not a condition of EAW service and other shippers remain free to obtain such service without obtaining service under FT-2. The remaining non-conforming provisions consist of specific rates, quantities and points of service, or are ministerial changes, and other potential shippers will retain the option to take these services at recourse rates without being prejudiced by such provisions. The changes proposed in Guardian's supplemental filing are ministerial as well and will not impair the service rights of other shippers.

11. We find that the non-conforming provisions contained in Guardian's nine proposed service agreements, as revised, do not substantively impair the service rights of any other shipper and as such, according to current Commission policy, we find that the non-conforming provisions of the nine service agreements are reasonable. Guardian must file executed copies of the agreements within thirty days of the date this order issues. Should the

executed version of these service agreements differ in any respect from those contained in the instant filing, Guardian must include an explanation of such change.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties  
Public File

Jim Armstrong  
General Manager Rates, Regulatory Affairs  
ONEOK Partners GP, L.L.C.  
ONEOK Plaza  
Tulsa, Oklahoma 74103

Joseph W. Miller  
Associate General Counsel  
ONEOK Partners GP, L.L.C.  
ONEOK Plaza  
Tulsa, Oklahoma 74103